

BUREAU OF LAND MANAGEMENT
 NEVADA STATE OFFICE
 1989 OCT 18 AM 9 00

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 WASHINGTON, D.C. 20240

10-12-89

NUMBER RECEIVED			
Routing	Initial	Date	
1 SD	3 C	10/19	
2 ASSOCIATE SD		10/19	
EEO			
PUBLIC AFFAIRS			
3 MINERAL RES.			
LANDS & REN. RES.			
OPERATIONS			
ADMINISTRATION			
In Reply Refer to:			
(700 ACTION)			
FILE	C		
LIBRARY	C		

October 12, 1989

Instruction Memorandum No. 90-30
 Expires 9/30/90

To: State Directors (Except Alaska) and Service Center Director

From: Director

Subject: Draft Wild Horse and Burro Policy Modifications Resulting
 From the Decision of the Interior Board of Land Appeals Dated
 June 7, 1989 DD 11/3/89

Recently, the Interior Board of Land Appeals (IBLA) issued a decision on appeals made by the Animal Protection Institute from proposed plans to remove excess wild horses in Nevada. The decision set aside plans to remove wild horses from herd management areas where the decision to remove was not predicated on a determination that the removal was necessary to restore the range to a thriving natural ecological balance and prevent a deterioration of the range. The decision has far-reaching effects in the wild horse and burro program. The purpose of this memorandum is to set forth the conclusions, findings, and interpretations of the decision and provide draft policy in light of that decision for your review and comment.

The IBLA decision:

1. Interpreted the term "appropriate management level" (AML) to mean that "optimum number" of wild horses which results in a thriving natural ecological balance and avoids deterioration of the range.
2. Noted that the Secretary in his June 1981 letter indicated that an appropriate determination of the number of wild horses to be permitted on the public range, consistent with Section 3(b) of the Act, requires relying on "an intensive monitoring program involving studies of grazing utilization, trend in range condition, actual use, and climatic factors."
3. Found that the statute simply does not authorize the removal of more than the excess number of wild horses.
4. Concluded that Section 3(b) of the Act does not authorize the removal of wild horses in order to achieve an AML which has been established for administrative reasons.
5. Found no support for the position that BLM has discretionary authority to order the removal of wild horses from an area of the public range simply to establish a baseline population for purposes of studying the potential for damage to the public range.

6. Concluded that Section 3(b)(2) of the Act contains the sole and exclusive authority for BLM to remove wild horses from the public range.

7. Concluded that it is not necessary to prepare a Herd Management Area Plan (HMAP) as a basis for ordering the removal of wild horses, so long as the record otherwise substantiates compliance with the statute.

8. Found no fault with the proposed removal of wild horses from designated horse-free areas, and from outside herd management areas, including "problem animals" intruding on private property.

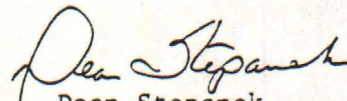
Incorporating these conclusions, findings, and interpretations into guidance requires significant changes in existing policies and procedures. Attached are draft revisions to Manual Sections 4710 - "Management Considerations" and 4720 - "Capture and Removal" that reflect modifications necessitated by the IBLA decision. Please review the draft Manual Sections and changes to glossary listed below and provide your comments to the Director (250), Premier Building, Room 901, by November 3, 1989.

BLM Manual 4700, Glossary

The term "Appropriate Management Level" is redefined as follows: the optimum number of wild horses and burros that provides a thriving natural ecological balance on the public range.

The term "Thriving Natural Ecological Balance" is added to the glossary and defined as follows: The condition of the public range that exists when resource objectives related to wild horses and burros in approved land use and/or activity plans have been achieved.

The term "Monitoring" is added to the glossary and defined as follows: The periodic and systematic collection of resource data to measure progress towards achieving objectives that provide a thriving natural ecological balance on the public range.


Dean Stepanek
Deputy Director

2 Attachments:

- 1 - 4710 - Management Consideration (12 pp)
- 2 - 4720 - Capture and Removal (6 pp)

4710 - MANAGEMENT CONSIDERATIONS

1. Explanation of Material Transmitted: This release transmits a revised Manual Section describing the authorities, objectives, and policies that guide the protection, management, and control of wild free-roaming horses and burros on public lands and on other lands that are adjacent to or intermingled with public land and that serve as habitat for wild horses and burros.
2. Reports Required: None.
3. Material Superseded: Manual Section 4710
4. Filing Instructions: File as directed below.

REMOVE:

4710

INSERT:

4710

(Total: 12 Sheets)

Assistant Director for Land
and Renewable Resources

4710 - MANAGEMENT CONSIDERATIONS

Table of Contents

- .01 Purpose
 - .02 Objectives
 - .03 Authority
 - .04 Responsibility
 - .05 References
 - .06 Policy

 - .1 Protection
 - .11 Observation
 - .12 Investigation
 - .13 Enforcement

 - .2 Land Use Planning
 - .21 Consultation
 - .22 Resource Management Plans
 - .23 Record of Decision
 - .24 Activity Plan

 - .3 Management Areas
 - .31 Herd Areas
 - .32 Herd Management Areas
 - A Wild Horse and Burro Ranges

 - .4 Herd Management
 - .41 Minimum Feasible Level of Management
 - .42 Census
 - .43 Methods of Population Control

 - .5 Habitat Management
 - .51 Inventory (Reserved)
 - .52 Improvements
 - A. Vegetation (Reserved)
 - B. Water (Reserved)
 - C. Structures

 - .6 Monitoring Herds and Habitat

 - .7 Research (Reserved)
- Handbook
- H-4710-1 - Census (Reserved)

4710 - MANAGEMENT CONSIDERATIONS

.01 Purpose. This Manual Section describes the authorities, objectives, and policies that guide the protection, management, and control of wild free-roaming horses and burros on the public lands and on other lands that are adjacent to or intermingled with public land and that serve as habitat for wild horses and burros.

.02 Objectives. The objectives of the Bureau relating to this Manual Section are:

A. To protect wild free-roaming horses and burros on the public lands from unauthorized capture, branding, harassment, and destruction.

B. To manage herds of wild horses and burros and their habitat under the principle of multiple use.

C. To maintain current data about wild horse and burro populations and their habitat.

D. To determine if a thriving natural ecological balance exists on the public lands through resource monitoring.

E. To determine periodically, for each herd management area, the optimum number of wild horses and burros compatible with maintaining a thriving natural ecological balance in that area.

F. To reach appropriate management levels as soon as practical and to maintain them thereafter.

G. To use the planning process to establish herd management areas and to identify objectives that will provide a thriving natural ecological balance among wild horses and burros, wildlife, livestock, and the vegetation and other resources.

.03 Authority. (See BLM Manual Section 4700.)

.04 Responsibility. (See BLM Manual Section 4700.)

.05 References. (See BLM Manual Section 4700 and 4730.)

.06 Policy. (See BLM Manual Section 4700.)

4710 - MANAGEMENT CONSIDERATIONS

.1 Protection of Wild Horses and Burros on Public Lands.

.11 Observation. The Authorized Officer shall provide for periodic observation of wild horse and burro herds to reduce the possibility of unauthorized capture, branding, harassment, or destruction.

.12 Investigation. The Authorized Officer, Special Agent, or Ranger shall conduct the initial investigation of all reports or observations of capture, branding, harassment, or deaths of wild free-roaming horses and burros. Suspected or known criminal violations must be referred to the Special Agent-in-Charge for investigation.

.13 Enforcement. On determination of a violation of the Wild Free-Roaming Horse and Burro Act or of the Code of Federal Regulations (43 CFR 4700), the Special Agent-in-Charge shall--depending on the severity of the infraction and the evidence available--issue a violation notice to the perpetrator(s), arrest the perpetrator(s), or refer the case to the U.S. Attorney for determination of prosecutive merit.

4710 - MANAGEMENT CONSIDERATIONS

.2 Land Use Planning.

.21 Consultation. The Bureau shall consult and cooperate with the Forest Service, Federal and State wildlife agencies, other affected Government agencies, applicable advisory committees, concerned public and private organizations, individuals with special expertise, and affected interests in the development of plans for wild horses and burros.

.22 Resource Management Plans. Section 202 of Public Law 94-579, directs the Secretary to ". . . develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." Decisions regarding the use of public lands by wild horses and burros shall be made through the planning process. Areas identified as wild horse and burro habitat in 1971 shall be the only areas considered in the planning process for establishment of herd management areas.

A. The Resource Management Plan shall contain quantifiable and measurable objectives for wild horses and burros, wildlife, livestock, and the vegetation and other resources that when achieved provide a thriving natural ecological balance on the public range.

B. Alternatives formulated in the planning process shall identify a range of possible combinations of wild horses and burros, wildlife, and livestock that could be maintained on the public range to achieve objectives that provide a thriving natural ecological balance.

C. Specific planning determinations and associated resource management plan standards for wild horses and burros are set forth in BLM Manual 1622.4, Supplemental Program Guidance for Renewable Resources. General planning process requirements and procedures, including those for public participation, alternative formulation, analysis, and documentation, are prescribed in BLM Manual Sections 1601 through 1617 and in associated regulations.

.23 Record of Decision (ROD). Decisions about management of the public lands that result from the planning process shall be documented in the ROD. For wild horses and burros, decisions documented in the ROD include: herd areas where wild horses and burros will be maintained (herd management areas), the number of wild horses and burros that will be maintained on each herd management area, and the objectives that provide a thriving natural ecological balance on the public range.

A. In herd areas where the land ownership pattern is such that agreement with the private landowner is necessary to establish a herd management area but agreement cannot be reached, the ROD shall note that, if the ownership pattern should improve and/or agreement with the landowner can be reached and forage is available, a wild horse or burro management area shall be established.

4710 - MANAGEMENT CONSIDERATIONS

.24 Activity Plan. A Herd Management Area Plan (HMAP) shall be prepared as soon as possible where the decision made through the land use planning process is to manage wild horses or burros on a herd area and management actions are planned. The purpose of the plan is to (1) document and place a priority on planned management actions to achieve herd and habitat objectives, (2) establish a time line for implementing the actions, and (3) estimate the cost of implementing the actions for budgetary purposes.

A. The HMAP shall include herd and habitat objectives, planned range improvements, population control strategies, monitoring methods and schedules, and criteria for selective removal of animals, if any. A map which shows the boundary of the herd management area, migration routes, water sources, existing or planned improvements, and other relevant data shall be a part of the plan. The environmental impact of the plan shall be evaluated.

B. An HMAP is not a prerequisite to removal of excess wild horses and burros.

4710 - MANAGEMENT CONSIDERATIONS

.3 Management Areas.

.31 Herd Areas. The geographic areas of public lands that were used as habitat for wild horses and burros in 1971 shall be delineated on maps and placed in a permanent file. If these original herd area boundaries are found to be inaccurate and must be redrawn, both old and new maps shall be maintained in a permanent file, together with an explanation of the reason for the change. If a decision is made in resource management planning not to manage wild horses and burros in a herd area because of resource problems or conflicts, eventual resolution of those problems or conflicts may allow for reconsideration of the decision.

.32 Herd Management Areas. The Bureau shall manage wild horses and burros within herd management areas as integral components of the public lands on the basis of multiple use and in a manner that ensures a sustained population of healthy, free-roaming animals. Where integral or extensive portions of herd areas that are suitable for long-term management are privately controlled, the Bureau shall seek to provide for wild horse and burro habitat needs and protection through cooperative agreements with owners of contiguous or intermingled private lands.

A. Wild Horse and Burro Ranges. A herd management area shall be considered for designation as a wild horse or burro range only if there is a significant public value present, such as a unique and interesting characteristic in the herd or an outstanding opportunity for public viewing and interpretation of the herd and its habitat. The nomination of a herd management area for designation as a range shall be considered in the BLM planning process to assess the impact on other resources and the degree of public acceptance.

4710 - MANAGEMENT CONSIDERATIONS

.4 Herd Management.

.41 Minimum Feasible Level of Management. The Wild Horse and Burro Act directs that management of the animals be at the minimum feasible level and that management activities be carried out in consultation with the wildlife agency of the State in order to protect the natural ecological balance of all wildlife species which inhabit the land, particularly endangered wildlife species. To carry out the direction established by Congress, wild horses and burros shall be managed with the least amount of population manipulation and habitat improvement necessary to achieve objectives stated in approved land use or activity plans.

.42 Census. Wild horse and burro herds shall be counted using methods recommended by the National Academy of Sciences (NAS) Committee on Wild Free-Roaming Horses and Burros to estimate herd size, distribution, composition, and rate of increase. The NAS Committee reported that it did not appear that annual censuses are necessary; rather a census every 2 or 3 years can provide information necessary "to maintain annual appraisals of herd size in order to know when to carry out herd reduction and to make annual forage allocations" Census methods recommended by the NAS shall be used until new technologies for counting wild animal populations are developed, accepted by the scientific community, and approved by BLM. When new census techniques are approved, they will be included in the census handbook. The purpose of the census is to make determinations whether and where wild horses and burros are in excess of the appropriate management level (AML) on public lands and how the AML should be achieved if excess animals exist. The census data also serve as a base line for habitat monitoring and measurement of progress towards objectives.

Not Approved

.43 Methods of Population Control.

A. Natural Methods. To an unknown extent, the rate at which wild horse and burro herds increase on the public lands is affected by the nutrient value of the forage consumed, climate, disease, and predators. When these methods, acting alone or in combination, are not sufficient to maintain the population of wild horses and burros at the AML, artificial methods to control the population shall be employed.

B. Artificial Methods.

1. Capture and Remove. Wild horses and burros shall be captured and removed in the following order and priority:

a. Old, sick, or lame animals shall be humanely captured and destroyed in the most humane manner possible. (See BLM Manual Section 4730.)

4710 - MANAGEMENT CONSIDERATIONS

b. Additional excess animals shall be humanely captured and made available for private maintenance and care. (See BLM Manual Section 4750.)

c. Healthy excess wild horses and burros for which an adoption demand by qualified individuals does not exist shall be captured and destroyed in the most humane and cost efficient manner possible, except that BLM has maintained a moratorium on destruction of healthy excess wild horses or burros since 1982, and this method of removal shall not be used until such time as the moratorium is lifted. (See BLM Manual Section 4730.)

2. Fertility Control. (Reserved)

DRAFT

4710 - MANAGEMENT CONSIDERATIONS

.5 Habitat Management.

.51 Inventory. (Reserved)

.52 Improvements. See BLM Manual Section 1740 - Renewable Resource Improvements and Treatments.

A. Vegetation. (Reserved)

B. Water. (Reserved)

C. Structures. See BLM Handbook 1741-1 - Fencing.

DRY

4710 - MANAGEMENT CONSIDERATIONS

.6 Monitoring Herds and Habitat. The purpose of monitoring wild horse and burro herds and their habitat is to collect and analyze the data necessary to evaluate progress towards meeting objectives listed in approved land use or activity plans and to develop herd management area plans.

A. Decisions about the management of the herd and their habitat, including those that affect the determination of the existence of a thriving natural ecological balance, shall be based on data and information. Minimum information requirements and data needs shall be documented in a monitoring plan established for each herd area. The intensity and frequency of monitoring shall be at a level commensurate with the complexity of the management decision involved.

B. Before a decision is made to obtain the necessary data through monitoring of herd areas, data contained in the most recent inventory of lands, environmental impact statements, completed land use plans, research studies, or other available information shall be examined. Only if the data are not of the type, quality, or quantity necessary to determine if a thriving natural ecological balance exists shall monitoring of area be undertaken.

C. The data shall be analyzed to determine if a thriving natural ecological balance exists among wild horses and/or burros, wildlife, and livestock, and the vegetation. Only when the analysis concludes that the objectives have not been or cannot be achieved shall an adjustment in the level of use by wild horses or burros be permitted. Wild horses and burros shall not be removed from the range to establish a baseline population for study purposes or to achieve a population level established through the land use planning process without regard to the optimum number of wild horses and burros that provides a thriving natural ecological balance.

D. Because of substantial dietary overlap between cattle and wild horses, actual use studies shall be conducted in addition to utilization and trend to monitor vegetation in wild horse management areas whenever cattle also use the area. Details on monitoring vegetation can be found in Handbook 4420-1, Rangeland Monitoring and Evaluation. Vegetation studies and their results shall be coordinated with other users of the vegetation, adjacent landowners, universities, advisory boards, Federal and State agencies, and private organizations.

E. Other habitat variables, i.e., water, climate, shelter, or effect of other uses on wild horses and burros, shall be monitored as necessary to ensure the safety and well being of the animals.

F. Procedures for the collection, recording, and storage of herd and habitat data shall be established to ensure the quality of the data collected, consistency of data collection methods, uniformity in recording data, and retrieval capability of stored data.

4710 - MANAGEMENT CONSIDERATIONS

.7 Research. (Reserved)

ORDER

4720 - CAPTURE AND REMOVAL

1. Explanation of Material Transmitted: This release transmits a revised Manual Section describing the authorities, objectives, and policies that guide the capture and removal of wild horses and burros from the public lands and other lands that are adjacent to or intermingled with public land.
2. Reports Required: None.
3. Material Superseded: Manual Section 4720.
4. Filing Instructions: File as directed below.

REMOVE:

4720

INSERT:

4720

(Total: 6 Sheets)

Assistant Director for Land
and Renewable Resources

4720 - CAPTURE AND REMOVAL

Table of Contents

- .01 Purpose
- .02 Objectives
- .03 Authority
- .04 Responsibility
- .05 References
- .06 Policy

- .1 Capture
 - .11 Capture Plan
 - .12 Capture Techniques
 - .13 Capture and Release
 - .14 Capture of Privately Owned Horses or Burros
 - .15 Capture of Adopted Animals That Escape

- .2 Removal
 - .21 Removal From Herd Management Areas
 - .22 Removal From Non-Management Areas
 - .23 Removal From Private Land
 - .24 Removal of Selected Animals
 - .25 Public Notification

Illustration

- 1. Unmarked Wild Horse and Burro Record (Form 4710-13)

Handbook

H-4720-1 - Capture (Reserved)

4720 - CAPTURE AND REMOVAL

.01 Purpose. This Manual Section describes the authorities, objectives, and policies that guide the capture and removal of wild horses and burros from the public lands and other lands that are adjacent to or intermingled with public land.

.02 Objectives. The objectives of the Bureau relating to this Manual Section are:

A. To remove as soon as practical, wild horses and burros that stray from public land onto private land and wild horses and burros in excess of the appropriate management level on public land.

B. To effect all captures and removals of wild horses and burros in a safe, humane, and cost effective manner.

.03 Authority. (See BLM Manual Section 4700.)

.04 Responsibility. (See BLM Manual Section 4700.)

.05 References. (See BLM Manual Sections 4700, 4730, and 4740.)

.06 Policy. (See BLM Manual Section 4700.)

4720 - CAPTURE AND REMOVAL

.1 Capture.

.11 Capture Plan. A capture plan shall be prepared for any scheduled capture and removal of wild horses and burros. (A written plan is not needed for removals undertaken in response to an emergency situation e.g., fire or adopted animals that escape.) The plan shall address, as a minimum, the following elements: capture method, location, and number of animals involved; procedures to minimize stress to animals during capture operations; transportation of animals from capture site to other locations; and possible need for humane destruction of old, sick, lame, or injured animals at the capture site and disposition of remains. (See BLM Manual Sections 4730 and 4740.) The necessary environmental review shall be accomplished as prescribed in BLM Manual Section 1790 and BLM Handbook H-1790-1.

.12 Capture Techniques. Wild horses and burros shall be captured by helicopter herding, baiting in traps, roping, or by chemicals.

A. The capture of wild horses by using a helicopter to herd the animals is prohibited during the 6 weeks that precede and the 6 weeks that follow the peak foaling period. Helicopters may be used year-round in the removal of wild burros. (See BLM Manual Section 4740.1.)

B. The capture of wild horses and burros by using bait (i.e., food, water, salt, or sexual attraction) to lure animals into a trap is the method least stressful to the animals and shall be used whenever practical.

C. A wild horse or burro may be captured by roping from horseback. Care should be taken to avoid the possibility of choking the animal or otherwise causing it undue stress or injury.

D. The use of chemicals to sedate or immobilize wild horses and burros to enable their capture shall be permitted when other methods have proven to be impractical or ineffective, when necessary to capture a sick or injured animal, or when needed for an approved research study. Only veterinarians, qualified researchers, or trained Bureau employees shall be authorized to use chemicals for sedating or immobilizing wild horses or burros. In each situation, the choice of the immobilizing agent and the method of delivery shall be determined based on considerations of humaneness and efficiency.

.13 Capture and Release. Wild horses and burros may be captured for reasons other than removal from the public lands and then may be released on herd areas. Unless the capture and release are the result of an emergency, a capture plan is required.

A. Appropriate reasons for the capture and subsequent release of wild horses and burros are:

4720 - CAPTURE AND REMOVAL

1. Approved research projects.
2. Relocation to other herd areas.
3. Treatment of an injured animal or prevention of a contagious disease.
4. Marking for identification.
5. Manipulation of herd characteristics in conformance with planning decisions.
6. Life-threatening situations.
7. Fertility Control.

B. If captured wild horses and burros are released into a herd area different from the one they occupied prior to capture, the animals shall be monitored after release to assure they have located food and water.

C. For each animal captured and released, the Authorized Officer shall complete Form 4710-13, Unmarked Wild Horse and Burro Record (see Illustration 1). The data shall also be entered into the Wild Horse and Burro Information System. (See BLM Wild Horse & Burro Information System Users Guide 4700 Series.)

.14 Capture of Privately Owned Horses or Burros. Whenever horses or burros show signs of private ownership, such as branding or gelding, are captured on public land, they shall be turned over to the State as estrays.

.15 Capture of Adopted Animals That Escape. Wild horse or burro adopters agree under the terms of adoption to notify the authorized officer within 7 days after discovery of escape, to pursue animals that escape from their care, and to be responsible for the costs of recapture. Adopted horses or burros that escape shall be recaptured using techniques listed in Manual Section 4720.12.

.2 Removal. Excess wild horses and burros on public land and those that stray onto private land shall be captured and removed as soon as practical. Wild horses and burros may be determined to be excess and removed from the range before resource damage occurs if it can be demonstrated that leaving the animals on the range would lead to range deterioration caused by an overpopulation of wild horses or burros before the next planned removal.

4720 - CAPTURE AND REMOVAL

.21 Removal From Herd Management Areas. Wild horses and burros shall be removed from herd management areas only after a determination has been made that they are excess or for an approved research study.

.22 Removal From Non-Management Areas. Wild horses and burros that stray outside of herd areas and onto other public land shall be considered excess, captured, and removed. When the decision made through the planning process is not to establish a herd management area in an area used as habitat in 1971, wild horses or burros that remain on the area shall be considered excess, captured, and removed.

.23 Removal From Private Land. Wild horses or burros that stray onto private land shall be removed as soon as practical after receipt of a written request from the landowner. The request shall include a legal description of the land the animals strayed onto, the date(s) the animals occupied the land, and any special requirements that should be included in the capture plan.

.24 Removal of Selected Animals. When the herd management area plan identifies certain characteristics in the herd to be perpetuated through retention of animals with those characteristics, the selective removal of animals without those characteristics shall be permitted. If there is no objective in the herd management area plan that identifies herd characteristics to be perpetuated, excess animals shall be captured by band and removed.

.25 Public Notification. A minimum of 30 days advance notice of any scheduled capture and removal shall be provided to the public to allow time for review of the capture plan and associated environmental documents. (See BLM Manual Section 4740.3 for public hearing requirements associated with use of motor vehicles and helicopters.)